

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL APPEAL No. 1265 of 1999****For Approval and Signature:****HONOURABLE MR.JUSTICE ANIL R. DAVE****HONOURABLE MR.JUSTICE KS JHAVERI**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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RAJESH MULJIBHAI - Appellant(s)**Versus****STATE OF GUJARAT - Opponent(s)**

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Appearance :

THROUGH JAIL for Appellant(s) : 1, MR BS SUPEHIA for Appellant(s) : 1,
MR KT DAVE, ADDL. PUBLIC PROSECUTOR for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE**and****HONOURABLE MR.JUSTICE KS JHAVERI****Date : 11/06/2007****ORAL JUDGMENT****(Per : HONOURABLE MR.JUSTICE ANIL R. DAVE)**

Being aggrieved by the judgment and order dated 29th October, 1999 passed in Sessions Case No. 23/98 by the Addl. Sessions Judge, Rajkot, this appeal has been filed by the appellant-convict. By virtue of the impugned judgment, the appellant-accused has been held guilty of committing offences punishable under sections 376(2)(f), 363, 366 and 323 of the Indian Penal Code and has been sentenced to 10 years Rigorous Imprisonment and a fine of Rs. 10,000/-, in default to undergo 1 year's simple imprisonment for the offence under sec. 376, 1 year's rigorous imprisonment and a fine of Rs. 1,000/-, in default, simple imprisonment for 3 months each for the offences under sec. 363 and 366 of IPC. No separate sentence has been imposed upon him for committing offence under sec. 323 of the IPC. All substantive sentences have been ordered to run concurrently. Out of the amount of fine, Rs. 10,000/- have been ordered to be given to the mother of the victim, Shantaben Bachhubhai, by way of compensation under sec. 357 of the Criminal Procedure Code.

2. In view of the judgment delivered by the Hon'ble Supreme Court in the case of **State of Karnataka v. Puttaraja**, AIR 2003 SCW 6429, name of the victim has not been stated in this judgment, but she has been referred to as "the victim."

3. Learned advocate Shri B.S. Supehia has appeared for the appellant-convict whereas learned APP Shri

K.T. Dave has appeared for the prosecution.

3. The facts of the case as revealed from the record, in a nutshell, are as under:

3.1 The 'victim' is an 8 year old girl, who had been enticed by the appellant by offering 'mamra' (puffed rice) of Rs. 10 and had been taken to a public toilet situated at Mahatma Gandhi Plot, Lane No. 3 of Khadiapara and she had been raped by the appellant. The victim was also given a slap. Thus, the alleged offences had been committed by the appellant.

3.2 It is the case of the prosecution that thereafter the victim had come to her residence and had narrated the entire story to her mother, Shantaben, PW No. 2 (Exh. 21). Shantaben found that panties of the victim had been bloodstained. Further details with regard to commission of the offences had been narrated by the victim in her language to Shantaben. When the victim was lifted by her mother Shantaben, she realized that even her clothes had been stained with blood. Thereafter the victim had been taken to a hospital, where the victim had been examined by Dr. Jyotsnaben Patni, Medical Officer, Class-II, PW No. 1 (Exh. 10). It was found by the medical officer that the hymen of the victim had been ruptured and there were injuries on her private parts. She also found blood on the private parts of the victim. Dr. Jyotsnaben Patni had taken blood and saliva samples of the victim and had forwarded to the

FSL for its analysis.

3.3 In pursuance of the FIR (Exh. 29), the investigating agency had made necessary investigation. The accused had been arrested and necessary arrest panchnama had been drawn. His blood, saliva etc. had been collected and sent to FSL for analysis.

3.4 In the course of trial, Dr. Narendrakumar Nakum, Medical Officer, Civil Hospital, Rajkot, PW No. 11 (Exh. 37), who had examined the victim, had also been examined.

3.5 Investigating Officer Bakul Jani, PW No. 14 (Exh. 47) was also examined, who had given details with regard to the investigation and the report received from FSL had been placed on record.

3.6 Upon perusal of the evidence adduced by the witnesses and upon going through other documentary evidence, the Sessions Court came to the conclusion that the offences alleged against the accused had been committed by him. For coming to the said conclusion, the Sessions Court had mainly considered the fact that sperm of the accused was found on the panties of the victim. Medical evidence was also duly examined by the Sessions Court and the Sessions Court has ultimately convicted the accused for the offences referred to hereinabove after considering

deposition of the following witnesses:

- (1)Jyotsnaben Patni, PW No. 1 (Exh. 10)
- (2)Shantaben, w/o of Bachhubhai, PW No. 2 (Exh. 21)
- (3)Mahendrabhai Jivanbhai Sarvaiya, PW No. 3 (Exh. 22)
- (4)Keshubhai Bikhabhai Harijan, PW No. 4 (Exh. 24)
- (5)Champaben Manubhai, PW No. 5 (Exh. 25)
- (6)Dakshaben Bachhubhai, PW No. 6 (Exh. 27)
- (7)Kedarnath Ramnath Avadhvasi, PW No. 7 (Exh. 28)
- (8)Bhadugar Narsigar, Police Head Constable, PW No. 8 (Exh. 31)
- (9)Mansukhbhai Devjibhai, PW No. 9 (Exh. 35)
- (10)Jivanlal Bhanjibhai, PW No. 10 (Exh. 36)
- (11)Dr. Narejdrakumar Tapubhai Nakum, PW No.11 (Exh. 37)
- (12)Ashokbhai Keshubhai, PW No. 12 (Exh. 41)
- (13)Naendrabhai Bhagwanjibhai, PW No. 13 (Exh. 45)
- (14)Bakulbhai Vittaldas Jani, PW No. 14 (Exh. 47)

3.7 The following important documentary evidence had been also considered by the Sessions Court :

- (1)Panchnama of clothes put on by the victim (Exh. 23)
- (2)Panchnama of the lace of offence (Exh. 48)
- (3)Arrest Panchnama (Exh. 46)

- (4) Panchnama of clothes put on by the accused (Exh. 49)
- (5) Certificate of Medical Officer dated 11.11.1997 (Exh. 39)
- (6) Certificate given by the Medical Officer of R.Z. Hospital, Rajkot (Exh. 19)
- (7) Report submitted by FSL (Exh. 57)
- (8) Report submitted by FSL, Junagadh (Exh. 58)
- (9) Report of Serological analysis (Exh. 59)
- (10) Case papers of the victim (Exh. 11)
- (11) Medical certificate of the victim (Exh. 20)

4. We have heard learned advocate Shri Supehia appearing for the appellant-convict and learned APP Shri KT Dave for the prosecution. Learned advocate Shri Supehia appearing for the applicant has mainly submitted that the Sessions Court has failed to appreciate the evidence properly and has committed several errors in appreciation of the evidence. It has been submitted by him that the victim had been tutored and deposition of the victim ought not to have been relied upon. He has further submitted that there was no evidence to show that that the victim was only 8 years old. The Sessions Court has committed an error by coming to the conclusion that age of the victim was 8 years. It has been also submitted by him that in absence of any eye witness, the Sessions Court should not have come to the conclusion that the offences alleged against the accused had been committed by him.

5. It has been thereafter submitted by him that it was not possible for the accused to commit rape in a public toilet and the said fact had not been considered by the Sessions Court. He has further submitted that on the body of the victim there was no injury and therefore it would not be safe to believe that the victim had been raped.

6. On the other hand, learned APP Shri Dave has relied upon the evidence to show that the Sessions Court has rightly convicted the accused upon proper appreciation of the evidence.

7. Upon considering the submissions made by the learned advocates and upon perusal of the evidence adduced by the prosecution, we are of the view that there is no substance in the submissions made by the learned advocate appearing for the appellant and the order of conviction passed by the Sessions Court is just, legal and proper.

8. We are not in agreement with the submission made on behalf of the appellant that the victim had been tutored. The victim is a girl of hardly 8 years and there was no reason for her to tell lies or to implicate the accused falsely. Right from the beginning the victim has named the accused as she knew the accused. There is sufficient evidence to show that the victim had been raped and upon perusal of the evidence adduced by the mother of the victim,

namely, Shantaben, PW No. 2 (Exh. 21) and deposition of the victim, PW No. 6 (Exh. 27), in our opinion, there is nothing which raises any suspicion about the truth contained in the deposition. The Sessions Court has considered evidence of the victim after examining the victim and knowing whether the victim was having sufficient understanding. The Sessions Court has noted the fact that the victim was sufficiently mature to give answers of questions put to her and as the victim was also in a position to understand the sanctity of oath, an oath had been administered and evidence of the victim had been recorded. The victim has identified the accused in the court-room and has also narrated what was done by the accused to her. Upon perusal of the evidence, we also feel that the conclusions drawn by the Sessions Court are correct. There is no reason for us to believe that the victim had been tutored by the prosecution.

9. So far as age of the victim is concerned, there is medical evidence to the effect that age of the victim was around 8 years and we have no reason to disbelieve the evidence adduced by a competent medical officer.

10. Submission made by the learned advocate for the appellant that it would not have been possible for the accused to commit rape in a public toilet cannot be believed in view of medical evidence adduced before the Sessions Court. Upon perusal of the medical evidence it is clear that hymen of the victim

had been ruptured and the private parts of the victim had also been injured. Blood was found by the medical officer, namely, Dr. Jyotsnaben Patni, PW No. 1 (Exh. 10) and, therefore, there is no reason to disbelieve medical as well as victim's evidence.

11. The last submission made by the learned advocate for the appellant is that as there was no injury on the body of the victim, one could not believe that she had been raped. The said submission is also devoid of substance for the reason that there is medical evidence to the effect that private parts of the victim had been injured and there was bleeding on the private parts. The hymen of the victim had been ruptured. Absence of injuries on other parts of the body of the victim would not mean that the medical evidence with regard to rape should be ignored.

12. Looking to the evidence adduced before the Sessions Court and reasons given by the Sessions Court, we do not find any substance in the submissions made by the learned advocate appearing for the appellant. We are in complete agreement with the reasons given by the Sessions Court for coming to the conclusion that the appellant-accused had committed the offences alleged against him.

13. In the circumstances, we do not find any substance in the appeal and the appeal is, therefore, dismissed.

(Anil R. Dave, J.)

(K.S. Jhaveri, J.)

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